UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/2000/3/Add.1
26 May 2000

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion and
Protection of Human Rights
Fifty-second session
Item 6 of the provisional agenda

CONTEMPORARY FORMS OF SLAVERY

Updated review of the implementation of and follow-up to the conventions on slavery

Addendum

Forms of slavery

GE.00-13857 (E)

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Introduction

1. The present addendum provides a more comprehensive discussion of the various forms of slavery as summarized in section II of the updated review (E/CN.4/Sub.2/2000/3).

I. SERFDOM

2. In the updated review, serfdom was defined, according to the Supplementary Convention of 1956, as "the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status". The updated review further stated the conclusion of the Working Group on Contemporary Forms of Slavery that existing land tenure regimes "can in certain circumstances be seen as oppressive power relationships arising from ownership or use of land and disposition of its products to create forms of servitude and bondage".

3. Serfdom has been categorized as a form of slavery since the first discussions preceding the adoption of the Slavery Convention of 1926. In its final report to the League of Nations, the Temporary Slavery Commission regarded serfdom as the equivalent of "predial slavery", that is, the use of slaves on farms or plantations for agricultural production.[1] The requirement contained in article 2 (2) of the Slavery Convention of 1926, "to bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms", consequently applies to serfdom as well as slavery.

4. The Temporary Slavery Commission also noted in a 1924 report that many people were found in "agricultural debt bondage" which combined elements of both debt bondage and serfdom.[2] That conclusion was confirmed by later investigations of the International Labour Organization (ILO) into the status and conditions of indigenous labour in Latin America during the 1940s.[3]

5. Records of discussions which occurred both in the United Nations and ILO before the adoption of the Supplementary Convention in 1956 indicate that the term "serfdom" was intended to apply to a range of practices reported in Latin American countries and more generally referred to as "peonage".[4] Those practices, which had developed in a context of conquest, subjugation of indigenous peoples and seizure of their lands, involved a landowner granting a piece of land to an individual "serf" or "peon" in return for specific services, including (i) providing the landowner with a proportion of the crop at harvest ("share cropping"), (ii) working for the landowner, or (iii) doing other work, for example domestic chores, for the landowner's household. In each case, it is not the provision of labour in return for access to land which is in itself considered a form of servitude, but the inability of the person of serf status to leave that status. The term "serfdom" and its prohibition in the Supplementary Convention appear applicable to a range of practices which still occur today but are rarely recognized or described in the countries concerned as "serfdom," as the term is associated by many with the political and economic order of medieval Europe.[5]

6. In some cases the status of "serf" is hereditary, affecting entire families on a permanent basis, while in others it is linked to and reinforced by debt bondage; in the latter case those affected are obliged to continue working for their landowner on account of debts they supposedly owe, as well as on account of their tenant status.

II. FORCED LABOUR

7. The updated review listed the four basic tenets followed by the ILO in adopting its 182 international conventions and its 1998 Declaration on Fundamental Principles and Rights at Work, namely (i) the elimination of forced labour; (ii) the freedom of association, including the right to form and join a trade union; (iii) the effective abolition of child labour; and (iv) the ending of discrimination in employment.[6] It defined forced labour, according to the ILO Forced Labour Convention, 1930 (No. 29) as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" and emphasized that it was the severe restriction on the individual's freedom that categorized forced labour as a form of slavery. The updated review described how the Abolition of Forced Labour Convention, 1957 (No. 105) obliged States parties to suppress the use of forced labour for political purposes, for purposes of economic development, as a means of labour discipline, as a punishment for strike action and as a means of discrimination. Further, the updated review listed as exceptions to the ILO forced labour conventions work or service constituting normal civil obligations in a fully autonomous country, including compulsory military service, work provided during emergencies and minor communal service.

A. Forced labour conventions

8. The Slavery Convention of 1926, in its article 5, allowed forced labour, but specified that it may only be exacted for public purposes, that it should be regulated by the competent central authorities of the territory concerned, and that "as long as forced or compulsory labour exists ... [it] shall invariably be of an exceptional character, shall always receive adequate remuneration, and shall not involve the removal of the labourers from their usual place of residence".

9. ILO Convention No. 29 obliges States parties to "suppress the use of forced or compulsory labour within the shortest possible time" (art. 1; emphasis added). The lack of an absolute prohibition, along with the existence of such an ambiguous time-frame for eradicating forced labour, may be explained by the fact that it was still routine for colonial authorities to rely on forced labour for public works. The ILO has recently noted, however, that a country may no longer rely on this ambiguity to justify inadequate national protections against forced labour.[7]

10. In a joint report issued in 1955, the United Nations Secretary-General and the Director-General of the ILO concluded that, despite the prohibitions of ILO Convention No. 29, forced labour was not being eradicated, and "new systems of forced labour for economic purposes or as a means of political coercion ... raise[d] new problems and call[ed] for action at the international level".[8] The 1956 Supplementary Convention provided for the abolition of practices which could "lead to forms of forced labour",[9] it was believed, however, that the international protections against forced labour were inadequate and that it was necessary to adopt another convention to strengthen the prohibition against compulsory labour.

11. Finding that the use of forced labour as a means of political coercion violated articles 2, 9, 10, 11 and 19 of the Universal Declaration of Human Rights, the ILO created the Abolition of Forced Labour Convention, 1957 (No. 105). The ILO forced labour conventions apply to work or service exacted by Governments or public authorities, as well as to forced labour exacted by private bodies and individuals, including slavery, bonded labour and certain forms of child labour.[10]

B. International Bill of Human Rights and other relevant human rights instruments

12. The ILO forced labour conventions are essentially the only international instruments that set out a definition of forced labour, although its prohibition is endorsed by many treaties, both international and regional. The International Bill of Human Rights contains various provisions relevant to forced labour. The Universal Declaration of Human Rights in article 4 does not specifically refer to forced labour but it is clear from discussions at the time it was drafted that forced labour was regarded as a form of servitude.[11] The International Covenant on Civil and Political Rights provides in article 8 (3) (a) that "[n]o one shall be required to perform forced or compulsory labour", subject to certain specified exceptions concerning prisoners, military service, emergencies and normal civil obligations.

13. Regional agreements also address forced labour. The European Convention for the Protection of Human Rights and Fundamental Freedoms, for example, prohibits forced or compulsory labour in article 4 (2).

III. DEBT BONDAGE

14. The updated review defines debt bondage, according to the Supplementary Convention, as the "status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined" (art. 1 (a)). The updated review discusses the prohibition of debt bondage by the Abolition of Forced Labour Convention, as well as the inclusion of debt bondage within the prohibition of forced labour in ILO Convention No. 29. It also lists several other ILO conventions concerned with the issue of debt bondage.

15. For some 10 years, the ILO Committee of Experts, and more recently the Conference Committee on the Application of Standards, have denounced the practice of debt bondage, in particular relating to children.[12] The ILO has observed that bondage of children generally occurs through a hereditary debt, an occasional debt, or an advance on salary.[13]

16. Although there is no absolute international prohibition on the payment of wages in consideration other than legal tender, the ILO has adopted restrictions to protect workers from abuse. The ILO Convention concerning Basic Aims and Standards of Social Policy, 1962 (No. 117)[14] requires States parties to take "all practicable measures" to prevent debt bondage. Part IV of that convention states that "wages shall normally be paid in legal tender only". The convention stipulates that wages must be paid regularly "at such intervals as will lessen the likelihood of indebtedness among the wage earners".[15] It also places responsibility on a

"competent authority" to ensure that, when food, housing, clothing, or other essential supplies and services are being used to pay the worker, their cash value is fairly assessed.[16] The convention places the responsibility on the States parties to establish mechanisms to monitor and control payments of wages which are made through non-cash transactions, and is intended to ensure that employers do not abuse their dominant position by charging inflated prices for goods provided in lieu of wages. Advances on wages must also be regulated by the competent authority, which should set a maximum limit on the amounts advanced and render any advance exceeding the capped sum "legally irrecoverable".

17. Extremely low wages are a cause of forced labour and debt bondage.[17] The ILO has therefore encouraged national authorities to set minimum wages to prevent the payment of extremely low wages which are insufficient to maintain the workers and their families.[18] The ILO Convention concerning Minimum Wage Fixing with Special Reference to Developing Countries, 1970 (No. 13) and its accompanying Recommendation No. 135 seek to give wage-earners the necessary social protection in terms of minimum permissible levels of wages.[19]

18. Debt bondage or bonded labour still exists today affecting millions of adults and children in their own countries and migrant workers throughout the world. In its most recent convention, the Worst Forms of Child Labour Convention, 1999 (No. 182), the ILO includes debt bondage among the "worst forms" prohibited by article 3 (a).[20]

19. In view of the prevalence of bonded labour among the landless in rural areas, Governments may in some instances be forced to reform the existing land tenure systems in order to prevent debt bondage and thereby comply with their obligations under the Supplementary Convention. In addition to adopting legislation to abolish debt bondage, to extinguish debts which have been incurred and to take preventive action, rehabilitation is a crucial element which Governments must undertake to fulfil their obligations under ILO Conventions Nos. 95 and 117. They must ensure that once bonded workers are freed they must not be drawn back into bonded status by promptly assuming another loan. India and Pakistan[21] both have legislation requiring the respective Governments to make payments to individuals identified as bonded labourers, in an effort to prevent the process of bonded labour from starting again.

IV. EXPLOITATION OF MIGRANT WORKERS

20. While all the existing instruments concerning slavery, servile status and forced labour apply to aliens and migrant workers as well as others, certain mechanisms of exploitation and forms of abuse affect migrant workers in particular and require special remedial action.[22] Both the United Nations and the ILO have adopted conventions to address these problems.[23]

21. Women migrant workers are particularly vulnerable to slavery-like exploitation and forced labour.[24] International instruments dealing with traffic in persons across international frontiers address some of the problems experienced by migrants,[25] but are essentially limited to preventing international recruitment for prostitution. Debt bondage, which affects many migrant workers, is explicitly addressed by the Supplementary Convention of 1956.[26]

22. Employers of migrant workers acquire a significant degree of control over their employees by offering to look after their wages. This practice is usually justified by the employer on the grounds that it will ensure earnings are not lost, or that they are invested to give the employee some extra benefit. Because of the migrant worker's vulnerable position s/he is often unable to refuse an employer's offer or is unaware that it would be prudent to do so. Once the employer has accumulated the equivalent of several months' wages, the employee is at a grave disadvantage if s/he wishes to depart and s/he must consequently put up with a significant level of abuse in an effort to retrieve her/his earnings. Such abuse sometimes involves physical assault and rape. The withholding of wages contravenes ILO Convention No. 95, which requires wages to be paid regularly by employers and prohibits methods of payment that deprive workers of the genuine possibility of terminating their employment. Although international standards on slavery do not specify that withholding wages or failing to pay an employee is a form of slavery, the practice is clearly a violation of basic human rights, notably the guarantee in article 7 (a) of the International Covenant on Economic, Social and Cultural Rights of "remuneration which provides all workers, as a minimum, with ... (i) fair wages and equal remuneration for work of equal value without distinction of any kind".

23. The Working Group on Contemporary Forms of Slavery observed at its April 1995 session that "foreign migrant workers are frequently subject to discriminatory rules and regulations which undermine human dignity".[27] At its June 1996 session the Working Group heard evidence that the confiscation of passports by employers was a significant way of imposing control on migrant workers, and urged States "to take necessary measures to sanction employers for the confiscation of passports belonging to migrant workers, in particular, migrant domestic workers".[28] In a report to the 2000 session of the Commission on Human Rights, the High Commissioner for Human Rights stated: "Governments should enforce the call of the Working Group on Contemporary Forms of Slavery upon employers not to take possession of workers' passports or other key documents ... A vital form of preventive action for all migrants appears to be to ensure that they are not left alone or isolated, i.e. that some freedom of association is respected and that consulates closely monitor their migrant nationals."[29]

V. TRAFFICKING[30]

24. As the main international convention concerned with traffic in persons deals uniquely with traffic for purposes of prostitution, the issues of traffic or trafficking in persons and prostitution are often dealt with together. Since instruments define traffic or trafficking to cover the movement of people for purposes other than prostitution or sexual exploitation, however, the issues of traffic in persons and prostitution are dealt with in separate sections in this addendum. As they are closely linked, the two sections should be read together.

25. There is no precise and globally recognized definition of "trafficking in persons", and ambiguity remains as to whether the term implies cross-border movement and also whether there must be an element of coercion involved.[31] The trafficking of persons today can be viewed as the modern-day equivalent of the slave trade of the last century.[32] The Covenant of the League of Nations adopted on 28 April 1919 called on member States not only to ensure fair and humane conditions of employment for all but also to work towards the suppression of traffic in women and children for the purpose of sexual exploitation.

26. Prior to the existence of the League of Nations certain efforts had been made by the international community to prohibit the slave trade. The Brussels Act of 1890 contained effective measures to control and prevent the slave trade. It provided for a Slavery Bureau to oversee this process and to subject the sea routes preferred by slave traders to naval patrolling. Article XVIII of the Brussels Act provided that a "strict supervision shall be organized by the local authorities at the ports and in the countries adjacent to the coast, with the view of preventing the sale and shipment of slaves ". Today, it is increasingly difficult to monitor and control the traffic in persons given the dramatic increase in global migration. Monitoring and prevention are made even more difficult because of the covert nature of the activities and the threats of violence associated with it, as in some instances organized crime is involved [33]

27. As noted in the updated review, the Slavery Convention in article 1 (2) referred to trafficking, including in its definition of "slave trade" "every act of trade or transport in slaves". The Supplementary Convention later added "by whatever means of transport" (art. 3), thus including transportation by air [34]

28. The international instruments dealing with trafficking which were implemented in the first part of the twe eth century focused on cases in which women and girls were moved across international frontiers without their consent for the purposes of prostitution [35] As noted in the updated review, the International Convention for the Suppression of the White Slave Trade Traffic obligates the parties to punish anyone who recruits a woman below the age of majority into prostitution, with or without her consent. Similarly, the International Convention for the Suppression of the Traffic of Women of Full Age establishes a duty to prohibit, prevent and punish the trafficking of women regardless of the question of consent. This 1933 convention specifically relates to the international traffic in consenting women of full age, but only in situations where there is traffic from one country to another.

29. This trend towards criminalizing the recruiting of women in one country to be prostitutes in another continued after the Second World War with the adoption of the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (Suppression of Traffic Convention), consolidating earlier instruments relating to traffic in women and children.

30. The Suppression of Traffic Convention prohibits procuring, enticing, or leading away a person for the purposes of prostitution even with the consent of that person (art. 1 (1)). The notion of trafficking was inextricably linked to prostitution as in the earlier conventions, resulting in a narrow interpretation of trafficking as it does not include the procurement of individuals for any other purpose than sexual exploitation. The reality today is that people are trafficked not only for use in the sex industry but for many other reasons. Accordingly, article 35 of the Convention on the Rights of the Child prohibits the abduction, sale, or traffic in children for any reason, for example begging [36]

31. As noted in the updated review, recruitment need not be across international borders to qualify as "trafficking" under article 17 of the Suppression of Traffic Convention, though the parties, in connection with immigration and emigration, are required to check whether the *trafficking involves prostitution*. The States parties are obliged to punish both voluntary and involuntary procurement into prostitution; hence, the consent of the trafficked person is

irrelevant. This approach reflects the view stated in the preamble to establish prostitution as a practice incompatible with the dignity and worth of the human person. The Convention also obligates States parties to take specific measures to protect immigrants and emigrants, the potential victims of trafficking, by providing them with relevant information to ensure that they do not fall victim to traffickers.

32. Article 1 of the Suppression of Traffic Convention requires the woman or man being trafficked to have been recruited "to gratify the passions of another" and "for purposes of prostitution". Because the requirement concerning the intentional character of the offence may create practical difficulties in implementation, "additional instruments should be envisaged to mitigate in certain cases that requirement concerning the subjective aspect of the offence".[37] As early as 1965 the International Criminal Police Organization (INTERPOL) recommended to the United Nations that the Suppression of Traffic Convention "be supplemented so as to cover cases of 'disguised traffic' (engaging persons for employment abroad that exposes them to prostitution)".[38] The suggestion was not, however, followed.

33. The Supplementary Convention also contains provisions regarding the transportation of slaves or persons of servile status from one country to another. Article 3 makes it a criminal offence to be involved in the slave trade and requires the States parties to exchange relevant information in a coordinated effort to combat the slave trade.[39] In addition, article 6 (1) of the Supplementary Convention makes "the act of enslaving another person or of inducing another person" into slavery or servile status a crime. There are various methods of procuring or enticing a person into slavery or servile status for the purposes of prostitution or other forms of exploitation. The primary methods include (i) abduction,[40] (ii) purchase,[41] or (iii) procurement with fraudulent inducements of jobs and a better life.[42]

A. Traffic in persons other than for prostitution

34. The updated review notes that there have been various suggestions since the Suppression of Traffic Convention was adopted in 1949 that the definition of "traffic in persons" should be extended to cover forms of recruitment which are not directly linked to prostitution, and also the movement of men, women, or children across international frontiers for purposes other than prostitution, when they are being subjected to coercion or are being deceived about the nature of the situation which awaits them. A broader definition would include "transporting a person from one place to another in order to subject him or her to the actual and unlawful power of other persons by means of violence or the threat of violence or by abusing a position of authority arising from a relationship or by misleading the other person".[43]

35. In 1994 a United Nations General Assembly resolution offered a de facto definition of trafficking in women and children. In that resolution, 49/166 of 23 December 1994, the Assembly condemned the "illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for the profit of recruiters, traffickers and crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labour, false marriages, clandestine employment and false adoption".

36. In its resolution 53/111 of 9 December 1998 the General Assembly established an intergovernmental ad hoc committee for the purpose of elaborating an International Convention against Transnational Organized Crime and discussing the elaboration of international instruments addressing trafficking in women and children and the illegal trafficking in and transporting of migrants, in addition to illegal trafficking in firearms.[44] In addition to the draft Convention, the Ad Hoc Committee has drafted the Protocol against the Smuggling of Migrants By Land, Air and Sea,[45] and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.[46]

37. The latter protocol would criminalize "trafficking in persons", which in its latest revised article 2 it defines as "the recruitment, transportation, transfer, harbouring or receipt of persons, either by threat or use of abduction, force, fraud, deception or coercion, or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person [, with the aim of submitting them or any form of exploitation ...]." The protocol also would require States parties to assist victims of trafficking, including protecting their privacy; providing housing; providing medical, psychological, and legal assistance, and permitting victims to remain in a country. States parties would be required to enact laws allowing victims to obtain compensation for damages suffered. The Protocol on Smuggling of Migrants seeks to eradicate, through international cooperation in the regulation of travel documentation and procedures, "smuggling of migrants" that is, "the procurement of the illegal entry into or illegal residence of a person in [a] [any] State Party of which the person is not a national or a permanent resident in order to obtain, directly or indirectly, a financial or other material benefit ...".

B. Trafficking in women

38. As noted above, the Suppression of Traffic Convention applies to women and men of all ages and is therefore more extensive in scope than earlier treaties which only applied to women and girls. Other treaties focus primarily on the problem of trafficking in women. The updated review notes that the Convention on the Elimination of All Forms of Discrimination against Women includes in its article 6 the obligation that States parties suppress trafficking in women. Various organizations have proposed definitions of "trafficking in women" in an effort to distinguish it from other forms of trafficking.[47] Trafficking has been established as a violation of women's rights. In the Vienna Declaration and Programme of Action adopted at the end of the 1993 World Conference on Human Rights, it was agreed that "[g]ender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudices and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated" (para. I.18).[48] The Working Group on Contemporary Forms of Slavery adopted at its 1998 session a recommendation declaring that "trans-border trafficking of women and girls for sexual exploitation is a contemporary form of slavery and constitutes a serious violation of human rights".[49]

C. Sex tourism

39. The 1983 report of the Special Rapporteur on the suppression of the traffic in persons and the exploitation of the prostitution of others characterized "sex tourism" as a phenomenon similar to trafficking, rather than just an exploitation of prostitution. "More conspicuous, and therefore easier to trace, is the other type of traffic which, instead of transporting the prostitute, temporarily transports the client. This is the channel of the package tours ('sex tours'), in which the services of a prostitute are included in the price the tourist pays for his ticket. This specialized kind of tourism is grafted onto an existing prostitution market and develops it."[50]

40. The Commission Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography adopted by the Commission on Human Rights in its resolution 1992/74 urges that "[s]pecial attention should be given to the problem of sex tourism. Legislative and other measures should be taken to prevent and combat sex tourism, both in the countries from which the customers come and those to which they go. Marketing tourism through enticement of sex with children should be penalized on the same level as procurement" (para. 47).[51]

D. Traffic in children

41. As related in the updated review, the Convention on the Rights of the Child specifically prohibits "the abduction of, the sale of or traffic in children for any purpose or in any form" (art. 35). Hence, the prohibition of trafficking in children is not limited to recruitment for prostitution, but includes a range of situations in which children are taken away from or given away by their families for some form of exploitation, including adoption,[52] recruitment for any form of sexual exploitation, including prostitution and pornography,[53] and recruitment to work.[54]

42. The 1994 Inter-American Convention on International Traffic in Minors, defining the scope of traffic (or trafficking) in children, specifies in article 2 that:

> "(a) 'Minor' means any human being below the age of eighteen.
>
> "(b) 'International traffic in minors means the abduction, removal or retention, or attempted abduction, removal or retention, of a minor for unlawful purposes or by unlawful means.
>
> "(c) 'Unlawful purpose' includes, among others, prostitution, sexual exploitation, servitude or any other purpose unlawful in either the State of the minor's habitual residence or the State Party where the minor is located.
>
> "(d) 'Unlawful means' includes, among others, kidnapping, fraudulent or coerced consent, the giving or receipt of unlawful payments or benefits to achieve the consent of the parents, persons or institutions having care of the child, or any other means unlawful in either the State of the minor's habitual residence or the State Party where the minor is located."

43. When children are trafficked across international frontiers, States are obligated to ensure that the true age of the children is ascertained by independent and objective assessment, preferably with the cooperation of the non-governmental sector. If they are to be returned to the country of origin, their safety must be guaranteed by independent monitoring and follow-up. Pending their return to the country of origin, they should not be treated as illegal migrants by the receiving countries, but should be dealt with humanely as special cases of humanitarian concern. Upon the children's return, the country of origin should treat them with respect and in accordance with international human rights principles, supported by adequate family-based and community-based rehabilitation measures.[55]

44. International conferences have recently focused attention on the eradication of trafficking in children.[56] The seriousness of the problem has also led the Commission on Human Rights to draft an Optional Protocol to the Convention on the Rights of the Child dealing specifically with the sale of children, child prostitution and child pornography, which was approved by the Commission at its fifty-sixth session in March/April 2000 and transmitted, through the Economic and Social Council, to the General Assembly for adoption.

VI. PROSTITUTION

45. Prostitution takes various forms and involves women, children, and also men, and, as noted in the previous section, is very closely related to trafficking. The updated review pointed out that the Suppression of Traffic Convention in article 1 requires States to punish "any person who, to gratify the passions of another ... procures, entices or leads away, for purposes of prostitution, another person ... [or] otherwise exploits the prostitution of another person" - the prohibition referring both to cases in which the prostitute is subjected to some form of coercion, as well as to acts carried out "with the consent of that person".[57] The Convention protects both men and women over the age of 18 practising prostitution. The updated review further noted that no international instrument actually defines prostitution, but it has been generally viewed as any sexual act offered for reward or profit.

46. "Exploitation of prostitution", also clearly considered a form of slavery by international instruments, includes maintaining or knowingly financing a brothel, that is, a place where one or more people are practising as prostitutes, or anyone who "knowingly lets or rents a building or other place ... for the purpose of the prostitution of others".[58]

A. Forced prostitution

47. The three international instruments concerning the traffic of women for prostitution adopted before 1933 address the various forms of coercion, threats and fraud which are used to force women or men into prostitution or to continue practising as prostitutes. For example, the International Convention for the Suppression of the White Slave Traffic of 1910 requires the punishment of "any person who, to gratify the passions of others, has by fraud or by the use of violence, threats, abuse of authority, or any other means of constraint, hired, abducted or enticed a woman or a girl of full age for immoral purposes, even when the various acts which together constitute the offence were committed in different countries, shall also be punished" (art. 2; emphasis added).

48. Forced prostitution occurs when a person is prostituted against his/her will, that is, compelled under duress or intimidation to engage in sexual acts in return for money or payment in kind, whether this is passed to others or received by the victim of forced prostitution herself.[59] Some commentators suggest that entering prostitution to earn money because of acute financial need should also be interpreted as "forced" prostitution.[60]

49. Forms of control over prostitutes include "(1) physical abuse; (2) physical control of prostitutes' children; with threats to keep the children as hostages if prostitutes leave; (3) serious threats of physical harm, including murder; (4) keeping prostitutes in a continuous state of poverty and indebtedness; and (5) ensuring that they have no freedom to move outside unaccompanied".[61] It is this element of coercion and lack of free will that clearly makes forced prostitution a contemporary manifestation of slavery as defined in the general international instruments concerned with slavery, as well as the Suppression of Traffic Convention.[62] Illegal immigrants are extremely vulnerable to this form of exploitation or forced labour. Traffickers, or their ultimate employer, often retain the victim's passport in order to blackmail her (or him) and subject her to forced prostitution, in many cases siphoning off the bulk of her (or his) earnings.

50. The General Assembly in 1993 adopted the Declaration on the Elimination of Violence against Women, seeking to eradicate, among other forms of violence against women, "trafficking in women and forced prostitution" (art. 2). There does not appear to be a substantial difference in meaning between "forced" and "enforced" in relation to prostitution. Under the provisions of article 27 of the Fourth Geneva Convention of 1949, "[w]omen shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault". Additional Protocol I prohibits "outrages of personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault" (art. 75 (2) (b)).[63]

51. The Rome Statute of the International Criminal Court includes in its definition of crimes against humanity, committed as part of a widespread or systematic attack against any civilian population, "enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity" (art. 7 (1) (g)). In the Rome Statute provisions relating to armed conflict not of an international character indicate that "rape, sexual slavery, enforced prostitution, forced pregnancy ... and any other form of sexual violence also constituting a serious violation of article 3 common to the Four Geneva Conventions" are prohibited as war crimes (art. 8 (2) (e) (vi)). The rules of international humanitarian law clearly establish forced prostitution as an international crime, even though such practices have been used as a means of modern warfare with apparent impunity.[64]

52. In recent years the international community has tended to focus its attention on the punishment of perpetrators of acts of violence against women. The Platform for Action adopted by the Fourth World Conference on Women in Beijing includes a call on Governments to take certain measures whose objectives included "providing better protection of the rights of women and girls and punishing the perpetrators, through both criminal and civil measures" (para. 130 (b)). The Commission on Human Rights has also encouraged the introduction of practical measures by States to implement international protection against prostitution.[65]

B. Children and prostitution

53. While there is continuing debate about whether adult prostitution should be tolerated in some circumstances, the Convention on the Rights of the Child clearly prohibits, in article 34:

(a) All forms of sexual exploitation and sexual abuse;

(b) The inducement or coercion of a child to engage in any unlawful sexual activity;

(c) The exploitative use of children in prostitution or other unlawful sexual practices;

(d) The exploitative use of children in pornographic performances and materials.

The terms "exploitative use of children in prostitution ..." in article 34 (c) was interpreted by some to signify that adults could legitimately pay for sex with children above the age of sexual consent (for example aged 16 or 17), but in no circumstances was it permissible for anyone else to profit from the money earned. In June 1999, however, the Worst Forms of Child Labour Convention, 1999 (No. 182) confirmed that the "use of a child for prostitution" is classified as a "worst form of child labour", and that international standards make it unacceptable for anyone to "use" a child over the age of consent in prostitution (art. 3 (b)). [66] The Commission on Human Rights adopted the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography in 1992 which confirmed that "[t]he trafficking in and sale of children, child prostitution and child pornography constitute modern forms of slavery which are incompatible with human rights ... [and that such practices] cannot be justified by reason of poverty or underdevelopment". [67]

C. Sexual slavery

54. The updated review pointed out that sexual slavery, the sexual exploitation of individuals through the use or threat of force, is related to prostitution, though distinct in that there need not be any "reward or profit".

55. This concept of sexual slavery has been recognized in national courts. For example, in United States v Sanga 967 F.2nd 1332 a man forced a woman to work as a domestic maid for over two years and forced her to have sex with him. The United States Court of Appeals for the 9th Circuit unanimously held that she was a "virtual slave" contrary to the provision of the Thirteenth Amendment to the United States Constitution, which prohibits slavery and involuntary servitude.

56. The use of sexual slavery in any form during times of armed conflict - rape camps, comfort stations, or other forms of sexual abuse - constitutes a grave breach of international humanitarian law. Armed conflict, including occupation of territories, tends to result in increased sexual violence, in particular against women, which requires specific protective and punitive measures.

57. Common article 3 to the four Geneva Conventions prohibits all parties to a conflict from perpetrating "outrages upon personal dignity, in particular humiliating and degrading treatment".

Common article 3 has over time been interpreted to include sexual slavery.[68] Article 147 of the Fourth Geneva Convention, which deals with "grave breaches," includes "torture or inhuman treatment ... wilfully causing great suffering or serious injury to body or health". Additional Protocols I and II contain prohibitions against any form of indecent assault, especially of women and children.

58. Abuse and systematic rape of women have long been used as a means of warfare; yet it is only in more recent international documents that references to "sexual slavery" emerge.[69] The Vienna Declaration and Programme of Action confirms that "all violations of this kind, including in particular murder, systematic rape, sexual slavery and forced pregnancy, require a particularly effective response" (para. II. 38).

VII. FORCED MARRIAGE AND THE SALE OF WIVES

59. Although the most recent instruments dealing with sexual exploitation are applicable to men and women equally, within the context of marriage women are particularly vulnerable. The Temporary Slavery Commission in 1924 included on its list of practices analogous to slavery "[a]cquisition of girls by purchase disguised as payment of dowry, it being understood that this does not refer to normal marriage customs".[70] The Supplementary Convention of 1956 identifies three types of institutions or practices akin to slavery to which women can be subjected in the context of marriage. The Supplementary Convention first prohibits any institution or practice whereby "a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family, or any other person or group" (art. 1 (c) (i)). It is not the payment which is an abuse, but its occurrence in a forced or non-consensual marriage. The second practice prohibited by the Supplementary Convention is that whereby a woman's husband, his family, or his clan, "has the right to transfer her to another person for value received or otherwise" (art. 1 (c) (ii)). The third prohibited practice concerns the inheritance of a widow, on her husband's death, by her husband's brother or another member of her deceased husband's family. This custom, known as "levirate", involves automatic remarriage to a member of the deceased's family.

60. Recognizing the close link between these three forms of servile status and the general practice of forced marriage, the Supplementary Convention requires States parties "to prescribe, where appropriate, suitable minimum ages of marriage, to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority, and to encourage the registration of marriages" (art. 2).

61. The 1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages specifies in article 1(1) that "[n]o marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and other witnesses ...". Article 2 requires States parties to "take legislative action to specify a minimum age for marriage", but does not itself specify any minimum age. The Convention on the Elimination of All Forms of Discrimination against Women stipulates that "[t]he betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory" (art. 16 (2)).

Mail-order brides

62. A relatively recent development concerning women available for marriage is the advertising of women for marriage outside their own countries in a variety of media (magazines, videos and the Internet), prompting the description "mail-order brides" and the concern that they may be trafficked. The Committee on the Elimination of Discrimination against Women (CEDAW) has classified such marriages a new form of sexual exploitation.[71]

63. While the marriage of women from one society, country, or continent to men from another cannot by itself be categorized as a form of slavery or servitude, it seems clear that women who leave their families to marry a man in a foreign country which they have not previously visited are vulnerable to a wide range of forms of exploitation prohibited by existing international standards. The involvement of commercial agents in organizing marriages does not in itself appear to be unacceptable, but if the agent makes payments to the bride's parents or others, the arrangement would come close to infringing the prohibition on the sale of women for marriage contained in the Supplementary Convention.

64. Women advertised for marriage are becoming victims of a contemporary form of slavery or of trafficking. Advertisements may portray women as commodities rather than people - in much the same way as they are portrayed in various forms of pornography - and are therefore demeaning to women in general. Almost invariably, women from developing countries advertise themselves to men in industrialized countries, creating a perception that women from developing countries have a secondary or servile status, this view is supplemented by a concern that certain men in industrialized countries deliberately seek out women from abroad who will behave in a more subservient way than women in their own culture. As new brides in countries where they do not have relatives or friends, and where they may not immediately acquire a permanent right of residence, women may be exposed to abuse by their new husbands and either not know where to turn for help or fear deportation if they abandon their new husbands.[72]

VIII. CHILD LABOUR AND CHILD SERVITUDE

65. This section summarizes international standards on child labour before focusing on definitions of child slavery and servile status, which, for lack of any other term in general use, are referred to here as "child servitude". The need to protect children from exploitative practices was formally acknowledged at the international level early in the twentieth century. The League of Nations included the protection of children within the ambit of its work on eliminating slavery and the slave trade. The League of Nations, in the Geneva Declaration of the Rights of the Child of 1924, stated that children must be protected against every form of exploitation.[73]

66. The Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights contain provisions prohibiting slavery, servitude and forced labour in all their forms and acknowledge the special place of children in society. Article 24 of the latter declares that every child has the "right to such measures of protection as are required by his status as a minor". In addition to the general prohibitions on slavery and forced labour, which are applicable to children as well as adults, the Supplementary Convention of 1956 specifically defines a servile status that is restricted to children alone. The International Covenant on

Economic, Social and Cultural Rights echoes the requirement of numerous ILO conventions that States should specify a minimum age below which "the paid employment of children should be prohibited and punishable by law" (art. 10 (3)).

67. Increased awareness in the 1980s and 1990s of the economic exploitation of millions of children around the world has pushed its consideration into the international arena and "to the forefront of a debate within governments, international organizations and the business sector".[74] Limits on child labour have been introduced as it has been universally accepted that children, by virtue of their physical and mental immaturity, need special protection.

A. The ILO and child labour

68. Child labour has been a special concern of the ILO from its inception. The preamble to its Constitution commits the ILO to protecting children as one of the essential elements in the pursuit of social justice and universal peace. The abolition of child labour is therefore one of the four main objectives of the ILO. The Minimum Age (Industry) Convention, 1919 (No. 5) was adopted at the very first session of the International Labour Conference.

69. The efforts of the ILO to prevent child labour can be divided into three stages. During the first stage, lasting from 1919 to 1973, the ILO sought to influence regulations and practice with regard to child labour in member States principally through the adoption of international labour conventions and recommendations especially on the minimum age of admission to employment.[75] Since 1979, and especially since 1983, when child labour was the theme of the Director-General's report to the International Labour Conference, the ILO has given more weight to public-awareness campaigns and the dissemination of information on forms of child labour that must be abolished. The third stage started at the beginning of the 1990s with a very clear emphasis on direct technical assistance to Governments, including action-oriented research to improve understanding of the problem, identify responses, develop a strategy and design programmes.

70. It has proven difficult, on a practical level, to distinguish between those practices that are permissible and those that constitute abusive forms of child labour. The ILO Minimum Age Convention, 1973 (No. 138) and its accompanying Recommendation No. 146 are the principal international instruments dedicated to eradicating child labour in general. They require ratifying States to implement national policies progressively to raise the minimum age for admission to the work force to ensure the fullest physical and mental development of young persons.

71. The Minimum Age Convention applies to all sectors of economic activity and covers children whether or not they are employed for wages. The Minimum Age Convention was introduced to prevent the exploitation of child labour by setting the minimum age for work at not less than the age of completion of compulsory schooling but not less than 15 years (14 years for countries in which the "economy and educational facilities are insufficiently developed").[76] The Convention allows children to do "light work" between the ages of 13 and 15 (12 years in developing countries).[77] The minimum age for "hazardous work" likely to jeopardize the health, safety, or morals of a child is set at 18 years.[78]

72. The Minimum Age Convention has received somewhat fewer ratifications than the other core ILO conventions. Governments have indicated that they were reluctant to ratify because of the technical nature of the Minimum Age Convention. Nonetheless, the Minimum Age Convention provides the only existing comprehensive set of guidelines relating to the appropriate age at which young children can enter the work force.

73. In view of the huge numbers of children employed in contravention of the Minimum Age Convention and in an apparent effort to give a clear signal about which forms of exploitation States should give priority to eliminating, the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Worst Forms of Child Labour Convention, 1999) (No. 182) was adopted by the International Labour Conference in June 1999, together with Recommendation No. 190 on the same subject. In article 3 the Convention defines "the worst forms of child labour" as:

> "(a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
>
> "(b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
>
> "(c) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
>
> "(d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children".

B. The United Nations and child labour

74. The Slavery Convention did not specifically refer to child slavery as a particular category in its definitions of slavery and the slave trade. It is clear that Governments' attitudes at that time were somewhat ambivalent, and possibly more tolerant, towards child labour than they are today. That approach had changed by the time the Supplementary Convention was being drafted, a specific reference to the exploitation of young persons was included in addition to an explicit prohibition of debt bondage regarding both adults and children.[79]

75. The Supplementary Convention also prohibits "any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour" (art. 1 (d)). That provision was implemented with the particular practice of "sham adoptions" in mind but it does, in fact, cover a wider range of practices involving the exploitation of children.[80]

C. Implementation strategies

76. The Commission on Human Rights in its resolution 1993/79 adopted the Programme of Action for the Elimination of the Exploitation of Child Labour which identifies the following

three forms of child labour as international crimes which violate the international standards against slavery: sale of children and similar practices of (including fake adoption); child pornography, trafficking in child pornography and international trafficking in children for immoral purposes; under-age maidservants in a position of servitude (para. 14). In paragraph 20 the Programme of Action calls for "energetic repressive action" to deal with such cases, and also calls on States to review their legislation "with a view to the absolute prohibition of employment of children" in the following seven sectors:

(a) Employment before the normal age of completion of primary schooling in the country concerned;

(b) Under-age maid service;

(c) Night work;

(d) Work in dangerous or unhealthy conditions;

(e) Activities linked with prostitution, pornography and other forms of sexual trade and exploitation;

(f) Work concerned with trafficking in and production of illicit drugs;

(g) Work involving degrading or cruel treatment.

D. Convention on the Rights of the Child

77. The United Nations Convention on the Rights of the Child contains one of the most explicit and comprehensive set of obligations on States relating to the suppression of the worst forms of child labour. Article 32 of the Convention recognizes the child's right to be protected from economic exploitation and from "performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development" (art. 32).

78. Articles 34, 35 and 36 of the Convention focus on separate aspects of child exploitation. Article 34 obliges States parties to protect children from "all forms of sexual exploitation and sexual abuse by implementing relevant national, bilateral and multilateral measures". This article can be read in conjunction with the general provision in article 19 of the Convention which protects children from all forms of physical or mental violence.

79. Article 35 provides protection for children from the risk of abduction, sale or trafficking - both abroad and within a country. This provision is more inclusive, and hence more protective, than the Suppression of Traffic Convention as it does not link the trafficking of children to sexual exploitation.[81] Article 35 is also broader than article 34 which relates solely to child pornography and prostitution. Also relevant is article 11 of the Convention which provides that States parties must "combat the illicit transfer and non-return of children abroad". Article 21 regulates the system of international adoptions and provides that it must not result in improper

financial gain. Article 36 provides an even broader, albeit less specific safeguard, requiring States parties to "protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare".

80. The Committee on the Rights of the Child established under the Convention on the Rights of the Child to monitor States parties' compliance with its provisions has made recommendations on how to achieve the elimination of child slavery. The Committee has focused on freedom for children from economic exploitation and discrimination, along with their rights to adequate family support and education.[82] The Committee has identified compulsory education as an important factor in eliminating child labour and has coordinated its mandate with the work of the ILO and UNICEF's Programme for Children in Especially Difficult Circumstances.

81. The Committee has supported the Commission on Human Rights which has drafted an Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography stipulating the basic measures required for preventing and eradicating those serious problems.[83] A second Optional Protocol to the Convention on the Rights of the Child has been drafted in regard to the involvement of children in armed conflicts. This draft Optional Protocol will ensure that children are not forced to enlist and participate actively in any armed conflict.[84] In article 38 the Convention presently provides that "[i]n recruiting among those who have attained the age of 15 years but who have not attained the age of 18 years, States parties shall endeavour to give priority to those who are oldest".

82. Article 3 (a) of ILO Convention No. 182 bans "forced or compulsory recruitment of children for use in armed conflict".[85] This provision appears to allow parties to hostilities to allow children aged 15, 16 and 17 to enter the armed forces on a voluntary basis, but to prohibit conscription if those under 18 are likely to be mobilized to fight.

83. Some States accept volunteers from 16 years upwards and resist increasing the minimum age of recruitment into the armed forces to 18. This view is reflected in the Rome Statute establishing the International Criminal Court where there are provisions making it a crime, in both international and internal armed conflicts, to conscript or enlist "children under the age of 15 years into the national armed forces or using them to participate actively in hostilities".[86] The new draft Optional Protocol to the Convention on the Rights of the Child improves the protection of children from recruitment to participate in armed conflict.[87]

X. OTHER ISSUES

84. The updated review pointed out that the Working Group on Contemporary Forms of Slavery has looked at the issues of apartheid, colonialism, trafficking in human organs and incest. After it was established in 1974 the Working Group on Slavery observed that apartheid and colonialism were also slavery-like practices, but concluded that it was not the right forum to consider them.

A. Apartheid and colonialism

85. By the time the Working Group on Slavery was established in 1974 the question of "slavery in all its forms" was already held to include "the slavery-like practices of apartheid and colonialism". At the first session of the Working Group, in 1975, consideration was given to apartheid and colonialism, and it was noted that various other bodies existed within the United Nations dealing with similar subjects such as the Committee on Apartheid and the Ad Hoc Working Group of Experts on Southern Africa. The Working Group on Slavery observed that "the lack of a comprehensive and detailed study on the relationship between apartheid, colonialism and slavery was deemed as rendering difficult the task of the Working Group of reviewing the slavery-like practices of apartheid and colonialism". [88]

86. At subsequent sessions the Working Group reviewed information about apartheid and received information about situations of colonialism. In 1983, for example, the Working Group noted in its conclusions and recommendations that it "recognizes that apartheid is a slavery-like practice and a collective form of slavery" and suggested that it should be renamed the "Working Group against Slavery, Apartheid, Gross Human Exploitations and Human Degradation". [89] That proposal was not accepted.

87. The most recent recommendation by the Working Group on the issue of the "[s]lavery-like practices of apartheid and colonialism" was issued in 1992, when it referred to earlier recommendations to focus attention on the situation of vulnerable groups, particularly women and children, and decided to devote "attention to ways and means to assist victims of apartheid in order to mitigate its consequences". [90]

B. Trafficking in human organs

88. There are some references to trafficking in human organs in various reports prepared for submission to the Commission on Human Rights but no survey of this practice has been compiled concerning the world as a whole. [91] The World Health Assembly has adopted guidelines which establish international standards in relation to organ transplants and the possibility of commercial trafficking. [92] The guidelines prohibit trafficking in human organs for commercial gain.

89. In 1991 the Working Group on Contemporary Forms of Slavery expressed concern at information "alleging that children are victims of, or are even killed for, the removal of organs for the purpose of commercial transplants". [93] The Working Group later noted that "specific proof of incidents involving and of the extent of this phenomenon is difficult to obtain", and requested the Secretary-General to invite United Nations agencies and others "to pursue their investigation" into allegations of this practice. [94]

90. In 1996 the Commission on Human Rights called on the Secretary-General to examine, in cooperation with relevant United Nations agencies, particularly WHO, as well as INTERPOL, "the reliability of allegations regarding the removal of organs and tissues of children and adults for commercial purposes". [95] The Commission has urged States to strengthen existing laws or to adopt new laws to punish those who knowingly participate in the traffic of organs, in particular children's organs. [96]

C. Incest

91. Prior to 1993 incest had not been described as a form of slavery and did not explicitly fall under the existing definitions of slavery or child servitude set out in international law. In May 1993 the Working Group on Contemporary Forms of Slavery addressed the issue and expressed its concern at the practice of incest and the sexual abuse of children inside the family, observing that this practice "is probably the most common, most widespread, most reprehensible, most disgraceful, socially unacceptable, morally repugnant and spiritually harmful betrayal of children within the whole array of contemporary forms of slavery" [97]

92. The Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, adopted in 1992, observes that "incest and child abuse within the family ... may lead to child prostitution" (para. 46), and urges States to take legislative, administrative, social and educational measures to protect children against all forms of abuse while in the care of parents, family, or others.

93. Incest is also a matter of concern to the Committee on the Rights of the Child not as a form of slavery but rather as a form of harmful child abuse contrary to the terms of the Convention on the Rights of the Child. It is addressed under the criminal codes and social welfare legislation of each country. Although incest and other forms of child abuse constitute serious violations of the Convention on the Rights of the Child, it is unlikely that incest falls within the ambit of the international conventions abolishing slavery. [98]

X. CONCLUSION

94. Despite wide belief to the contrary, slavery in its various forms remains prevalent as the world enters a new millennium. The concept of slavery has remained quite static during the nearly two centuries in which Governments and non-governmental organizations have attempted to seek its abolition. Nonetheless, as this updated report has illustrated, a number of slavery-like practices have evolved. In the past decade there have been proposals for yet further expansion of the definition of contemporary forms of slavery which may dilute efforts to eradicate the historical forms of slavery. Such proposals should be carefully scrutinized.

Notes

[1] Temporary Slavery Commission Report to the Council, League of Nations (A.19.1924.VI.B), para. 97. Slaves involved in growing and harvesting sugar cane in the West Indies in the eighteenth century were classified as "praedial" or predial slaves. See "Caribbean Agriculture" in A Historical Guide to World Slavery, Seymour Drescher and Stanley L. Engerman (eds.), 1998, p. 113.

[2] Ibid.

[3] "First session of the ILO Committee of Experts on Indigenous Labour", International Labour Review, vol. LXIV, No. 1, July 1951, pp. 61-84.

[4] C.W.W. Greenidge, Slavery at the United Nations, 1954, p. 8.

[5] "Serfdom in Medieval Europe", in The Historical Encyclopedia of World Slavery, Junius P Rodriguez (ed.), vol. 2, 1977, p. 575.

[6] See ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up.

[7] Report of the Committee of Experts on the Application of Standards, 1998, p. 100; The Commission of Inquiry on the observance of the Forced Labour Convention No. 29 in Myanmar agreed with this view having regard to the status of the abolition of forced or compulsory labour in general international law as a peremptory norm from which no derogations can be made. Report of the Commission of Inquiry Appointed under article 26 to Examine the Observance of Myanmar of the Forced Labour Convention, 1930 (No. 29), 1998, p. 72.

[8] United Nations document E/2815 (1955).

[9] General Conference of the ILO, Report IV (2), 40th Session (1957), p. 4.

[10] ILO Governing Body report, document 265/2 (1996), para. 32.

[11] See E/CN.4/SR.53 (1948).

[12] ILO Governing Body Report, supra note 10.

[13] International Labour Office, Practical Action to Eliminate Child Labour, 1997; see also J. Hilowitz, Labelling Child Labour Products, 1997.

[14] Convention No. 117 has been ratified by only 32 States.

[15] See also ILO Protection of Wages Convention, 1949 (No. 95) (additionally prohibiting methods of payment that deprive workers of the genuine possibility of terminating their employment), which has been ratified by 94 States. Recommendation No. 85 (indicating either twice a month or monthly as the acceptable periodicity of wage payments).

[16] Ibid., art. 9 (also requiring that deductions from wages be fair and authorized by national legislation, and specifically prohibiting "any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment").

[17] See, e.g. Bandhua Mukti Morcha v. Union of India & Others (1984) 2 S.C.R. 67 and Supreme Court of India decision of 13 August 1991 on Contempt of Court Petition in conjunction with Writ Petition (Civil) No. 2135 of 1982 Bandhua Mukti Morcha v. Union of India & Others (deciding that any workers who were paid less than the minimum wage were bonded labourers).

[18] ILO Convention No. 117, art. 10.

[19] Several previous conventions had a similar objective. ILO Convention No. 26 and Recommendation No. 30 (applicable to trades) and Convention No. 99 and Recommendation No. 89 (applicable to agriculture) stipulate that the minimum wage should not be fixed at a lower rate than one which would ensure the subsistence of the worker and his or her family.

[20] See section on The ILO and child labour, infra.

[21] Respectively, in India the Bonded Labour System (Abolition) Act, 1976 (amended 1985), and in Pakistan the Bonded Labour System (Abolition) Act, 1992.

[22] The range of abuses was described in detail by the Sub-Commission's Special Rapporteur on exploitation of labour through illicit and clandestine trafficking, Halima Embarek Warzazi, appointed in 1973. Her final report was issued as a United Nations publication in 1987 (Sales No. E.86.XIV.1).

[23] The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, General Assembly resolution 45/158 of 18 December 1990, which has not yet been ratified by enough States to come into force; ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). The provisions of the ILO conventions are mentioned in the section on Trafficking, infra.

[24] M. Wijers and Lin Lap-Chew, Trafficking in Women, Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution, Global Alliance Against Trafficking in Women, 1997.

[25] See section on Traffic in persons other than for prostitution, infra.

[26] See section on Debt bondage, supra.

[27] Report of the Working Group on Contemporary Forms of Slavery on its twentieth session, (E/CN.4/Sub.2/1995/28), recommendation 8.

[28] Report of the Working Group on Contemporary Forms of Slavery on its twenty-first session (E/CN.4/Sub.2/1996/24), recommendation 9.

[29] E/CN.4/2000/12, para. 68.

[30] The terms "traffic" and "trafficking" refer to the same phenomenon in English. Confusion sometimes arises when these terms are translated into other languages using several different terms to denote different degrees of seriousness or enslavement, while in English only the single term "traffic" is employed. The Suppression of Traffic Convention refers in its English-language title to "the traffic in persons", in French to "la traite des êtres humains" and in Spanish to "la trata de personas". The terms "traite" and "trata" are the same terms as are used to refer to the word "trade" in the phrase "slave trade", as in the title of the Supplementary Convention, and appear to carry a stronger connotation of treating human beings as commodities than the term "traffic" conveys in English.

In contrast, however, the terms being used to refer to traffic in persons in current proposals for the draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, are different, and the phrase "trafic de personnes" is used instead of "la traite des êtres humains", implying that the abuse being described is of a slightly lesser order than that denoted by "la traite".

[31] Traffic in women and girls: report of the Secretary-General (A/50/369) (1995), para. 17.

[32] See Kevin Tessier, "The New Slave Trade: The International Crisis of Immigrant Smuggling", Indiana Journal of Global Legal Studies, vol. 13 (1995-1996), p. 261 (concluding that "underground trade in human beings exacts such an enormous toll in human misery that it has been called a modern version of the slave trade".

[33] Lan Cao, "Illegal Traffic in Women: A Civil RICO [Racketeer Influenced and Corrupt Organization Act] Proposal", Yale Law Journal, vol. 96 (1987), p. 1297.

[34] U.O. Umozurike, "The African Slave Trade and the Attitude of International Law Towards It", Howard Law Journal, vol. 16 (1971), p. 346.

[35] These were the International Agreement for the Suppression of the White Slave Traffic of 1904, the International Convention of the Suppression of the White Slave Traffic of 4 May 1910, the Convention for the Suppression of the Traffic in Women and Children of 30 September 1921 and the Convention for the Suppression of the Traffic of Women of Full Age of 11 October 1933. A further draft convention was prepared by the League of Nations in 1937 but was not adopted.

[36] International Labour Office, "A New Kind of Trafficking: Child Beggars in Asia", World of Work, vol. 26 (1998), p. 17.

[37] Warzazi, supra note 22, para. 89.

[38] Inquiry on the status of combating of the traffic in persons and of the exploitation of the prostitution of others: report of the Secretary-General (E/CN.4/Sub.2/AC.2/1982/13), para. 139.

[39] See also Economic and Social Council resolution 1998/20 of 20 July 1998, entitled "Action to combat international trafficking in women and children" (stressing the importance of "sharing information, coordinating law enforcement activities ... in order to locate and arrest those who organize trafficking in women and children, as well as those who exploit those trafficked").

[40] See Kathleen Barry, Female Sexual Slavery, 1984 (pointing out the difficulty of assessing the extent of abduction, as escape is often difficult and, consequently, the abduction goes unreported).

[41] See "A Painful Trade for North Koreans", International Herald Tribune, 13-14 February 1999, p. 1 (discussing the phenomenon of selling children for food); Statement by the President of the General Assembly on International Day for the Abolition of Slavery, 2 December 1996 (GA/9190) (condemning as tragic cases where victims are sold with a family's complicity, especially in systems where children marry).

[42] See Uli Schmetzer, "Slave Trade Survives, Prospers Across Asia" China Tribune, 17 November 1991, p. C1 (noting that the target group for such procurement are those who are young, poor, and seeking financial security).

[43] The Traffic in Persons: Report of the Advisory Committee [to the Netherlands Minister of Foreign Affairs] on Human Rights and Foreign Policy (1992); see also Seminar on action against traffic in women and forced prostitution: note by the Secretary-General (E/CN.4/Sub.2/AC.2/1992/8) (proposing that the United Nations should consider extending the scope of relevant international regulations to include all forms of trafficking in persons irrespective of the activity persons are trafficked for); ILO Convention No. 143 (recognizing that trafficking occurs for purposes in addition to prostitution).

[44] See Revised Draft United Nations Convention against Transnational Organized Crime (A/AC.254/4/Rev.5) (1999).

[45] Revised Draft Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime (A/AC.254/4/Add.1/Rev.5) (2000).

[46] Revised Draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (A/AC.254/4/Add.3/Rev.6) (2000).

[47] Council of Europe Parliamentary Assembly Recommendation 1325 (1997) on Traffic in Women and Forced Prostitution (defining "traffic in women" as "any legal or illegal transporting of women and/or trade in them, with or without their initial consent, for economic gain, with the purpose of subsequent forced prostitution, forced marriage or other form of forced sexual exploitation"); Trafficking of Women to the European Union: Characteristics, Trends and Policy Issues, International Organization for Migration, 1996, p. 3 (defining trafficking in women as "any illicit transporting of migrant women and/or trade in them for economic personal gain", including facilitating their movement, with or without their consent, deceiving them about the purpose of the migration, legal or illegal, physically or sexually abusing them for the purpose of trafficking, selling, or trading in them for the purpose of employment, marriage, prostitution, or other forms of profit-making abuse).

[48] See also Declaration on the Elimination of Violence against Women, General Assembly resolution 48/104, art. 2, (including "trafficking in women" in its definition of violence against women); Radhika Coomaraswamy, Report of the Special Rapporteur on violence against women, its causes and consequences (E/CN.4/1997/47) (discussing the causes of trafficking in women).

[49] Report of the Working Group on Contemporary Forms of Slavery on its twenty-third session (E/CN.4/Sub.2/1998/14), recommendations 3 and 4. The Working Group cited many instruments in its recommendations, including the slavery and forced labour conventions. The Commission on Human Rights also considers trafficking a form of violence against women and a violation of their human rights which must accordingly be eliminated (see Commission resolution 1994/45).

[50] Jean Fernand-Laurent, Report of the Special Rapporteur on the suppression of the traffic in persons and the exploitation of the prostitution of others (E/1983/7), para. 39 (also stating that "such tourism is quite plainly the worst possible image of development which the industrialized countries could project").

[51] In 1995 the Working Group on Contemporary Forms of Slavery recommended that "[g]overnments prohibit advertising or publicizing sex tourism and they not facilitate other commercial activities involving sexual exploitation". Report of the Working Group on Contemporary Forms of Slavery on its twentieth session, supra note 27, recommendation 3 on the prevention of traffic in persons and the exploitation of the prostitution of others.

[52] The main instrument adopted to prevent such trafficking is the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption of 1995, article 32.1 of which states: "No one shall derive improper financial or other gain from activity related to intercountry adoption."

[53] Article 34 of the Convention on the Rights of the Child addresses the use of children in prostitution or other unlawful sexual practices and in pornographic performances and materials.

[54] Supplementary Convention, art. 1 (d).

[55] Provisional report of the Special Rapporteur on the sale of children, child prostitution and child pornography (A/49/478) (1994), para. 31.

[56] See, e.g. Programme of Action of the International Conference on Population and Development, Report of the International Conference on Population and Development Cairo, 5-13 September 1994 (United Nations publication, Sales No. E.96.IV.13, chap. I, resolution 1, annex, principle 11 (stating that "all States ... should give the highest possible priority to children" and that "[t]he child has the right to standards of living adequate for its well-being ... and to be protected ... from all forms of physical or mental violence ... maltreatment or exploitation, including sale, trafficking, sexual abuse and trafficking in its organs"); Final Report of the World Congress Against Commercial Exploitation of Children (Stockholm, August 1997) (considering the scope of the problem of child trafficking and measures that could be adopted to combat the problem); see also the report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4.1997/95 para. 116 (a), General Assembly resolution 51/66 of 31 January 1997, entitled "Traffic in women and girls".

[57] See also International Convention for the Suppression of the Traffic in Women of Full Age, art. 1 (similarly banning traffic in women "even with [their] own consent").

[58] Ibid. art. 2 (2). Note that article 6 of the Convention requires States parties to put an end to licensing or "special registration" of prostitutes.

[59] Michèle Hirsch, Plan of Action Against Traffic in Women and Forced Prostitution, Council of Europe EG(96) 2 (1996) (proposing, as a definition of "forced prostitution", the "act, for financial gain, of inducing a person by any form of constraint to supply sexual services to another person"); see also International Labour Organization, The Sex Sector: The Economic

and Social Basis of Prostitution in South East Asia, Lin Lean Lim (ed.), 1998 (describing forced prostitution as "the ownership of women and children by pimps, brothel owners and sometimes even customers for the purpose of financial gain, sexual gratification and/or power and domination").

[60] See, e.g. report of the Special Rapporteur on the suppression of the traffic in persons and the exploitation of the prostitution of others (E/1983/7), para. 23 (asserting that "even when prostitution seems to have been chosen freely, it is actually the result of coercion", and quoting from the testimony given to the Congress of Nice on 8 September 1981 by three "collectives of women prostitutes": "As prostitutes, we are all aware that all prostitution is forced prostitution. Whether we are forced to become prostitutes by lack of money or by housing or unemployment problems, or to escape from a family situation of rape or violence (which is often the case with very young prostitutes), or by a procurer, we would not lead the 'life' if we were in a position to leave it."); Kathleen Barry, The Prostitution of Sexuality, 1995 (arguing that there is no such thing as consensual prostitution and calling for the elimination of prostitution in all its forms); Centre on Speech, Equality and Harm, Creating an International Framework for Legislation to Protect Women and Children from Commercial Sexual Exploitation, University of Minnesota Law School Preliminary Report (1998) (arguing that only coerced prostitution should be controlled and prevented).

[61] Nancy Erbe, "Prostitutes, Victims of Men's Exploitation and Abuse", Law and Inequality Journal vol. 2 (1984), pp. 609, 612-613; John F. Decker, Prostitution: Regulation and Control, 1979, p. 230 (defining "pimp" as one who "draws another into prostitution and thereafter dictates the daily activities, supervises the manner of operation, ... expropriates and spends virtually all earnings and otherwise commands influence over that person's life". Under such circumstances the control may become so complete that the pimp "will have little difficulty actually selling his 'possession' to another pimp".); see also The Lively Commerce: Prostitution in the United States, 1971, p. 117.

[62] See Neal Kumar Hatyal, "Men Who Own Women: A Thirteenth Amendment Critique of Forced Prostitution", Yale Law Journal, vol. 103 (1993), pp. 791, 793 (pointing out that "forced prostitution like slavery implicates all of the core concerns of the Thirteenth Amendment - physical abuse, lack of free will, forced labour and social stratification"); Update of the Report on Slavery submitted to the Sub-Commission in 1966: report by Mr. Benjamin Whitaker, Special Rapporteur (E/CN.4/Sub.2/1982/20), p. 8 (considering forced prostitution a form of slavery).

[63] Additional Protocol I also affords, in art. 76 (1), special protection and respect to women, "in particular against rape, forced prostitution and any other form of indecent assault"; see also Additional Protocol II prohibiting "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault [and] slavery and the slave trade in all their forms" (art. 4 (2) (e)); the Platform for Action adopted by the Fourth World Conference on Women, Beijing, 4-15 September 1995 (United Nations publication, Sales No. E.96.IV.13), para. 144 (b) (urging Governments to "respect fully the norms of international humanitarian law in armed conflicts and take all measures required for the

protection of women and children in particular against rape, forced prostitution and any other form of indecent assault"); Tong Yu, "Reparation for Former Comfort Women of World War II", Harvard International Law Journal, vol. 36 (1995), p. 533.

[64] Mass Rape: The War Against Women in Bosnia-Herzegovina, Alexandra Stiglmayer (ed.), 1994; Beverly Allen, Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia, 1996.

[65] In its resolution 1996/24, for example, it endorsed the conclusion reached at the Fourth World Conference on Women and asked that Governments adopt the practical proposals aimed at eliminating prostitution as it violates basic human rights. At the same session, in 1996, the Commission approved the Programme of Action for the Prevention of the Traffic in Persons and the Exploitation of the Prostitution of Others (E/CN.4/Sub.2/1995/28/Add.1).

[66] See also section on Child labour and child servitude, infra.

[67] The Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography pointed to particular circumstances sometimes associated with child prostitution, including incest and sexual abuse within the family, sex tourism and the posting of military personnel to bases abroad or in situations where they might pay a child for sex.

[68] Linda Chavez, Systematic rape, sexual slavery and slavery-like practices during periods of armed conflict (E/CN.4/Sub.2/1996/26).

[69] Report of the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia (E/CN.4/1996/63); Report of the Special Rapporteur on the situation of human rights in Rwanda (E/CN.4/1996/68) ; see e.g. Gay J. McDougall, Systematic rape, sexual slavery and slavery-like practices during times of war (E/CN.4/Sub.2/1998/13) (pointing out that detaining women in "rape camps or comfort stations [and] forced temporary 'marriages' to soldiers are both in fact and law forms of slavery contrary to the international standards" (para. 8)); Rape and abuse of women in the areas of armed conflict in the former Yugoslavia: report of the Secretary-General (A/51/557) (citing General Assembly resolution 50/192 strongly condemning the abhorrent practice of rape and abuse of women and children in the area of armed conflict in the former Yugoslavia and reaffirming that rape in the conduct of armed conflict constituted a war crime).

[70] The suppression of slavery: memorandum submitted by the Secretary-General to the Ad Hoc Committee on Slavery (ST/SPA/4) (1951), p. 31.

[71] See General Recommendation No. 19 (eleventh session, 1992) in Official Records of the General Assembly, Forty-seventh Session, Supplement No. 38 (A/47/38), chap. I.

[72] Markus Dreixler, Der Mensch als Ware - Erscheinungsformen modernen Menschenhandels unter strafrechtlicher Sicht, 1998, p. 200.

[73] See also the Declaration of the Rights of the Child, proclaimed by the General Assembly in resolution 1386 (XIV) of 20 November 1959, *principle 2*.

[74] Jannelle M. Diller and David A. Levy, "Child Labour, Trade and Investment: Towards the Harmonization of International Law", American Journal of International Law, vol. 19 (1997), p. 663.

[75] The earlier standards, from 1919 to 1932, generally set the basic minimum age at 14 years and this age was later revised to 15. The ILO conventions targeting particularly hazardous sectors set higher age limits, for example, 16 years for underground work (Convention No. 123 of 1965) and up to 18 for work involving exposure to radiation (Convention No. 115 of 1960) or dangerous chemicals (Convention No. 136 of 1971).

[76] ILO Minimum Age Convention, 1973 (No. 138), art. 2 (3) and 2 (4).

[77] Ibid., art. 7 (1) and 7 (4).

[78] Ibid., art. 3 (1).

[79] The Supplementary Convention also contains an implicit prohibition of the exploitation of the labour of young girls through early marriage. Hans Engen concluded in his report that a supplementary convention on slavery was necessary to cover "slavery-like practices not included in the Slavery Convention 1926". See E/2673 (1955).

[80] A "sham adoption" occurs when a family, generally in financial difficulty, gives or sells a child to a richer family, nominally to be adopted, but in reality to work in the rich family's household without enjoying either the same status or the same treatment as ordinary children in the household into which they are adopted. A similar practice, still widely reported, involves children being sent to the households of relatives or others who are expected by the child's parents to give special attention to their education, but in reality exploit the child's labour. The largest group of children whose predicament falls into this category, currently numbering in the millions, and primarily girls, are those employed as live-in domestics.

[81] "A New Kind of Trafficking: Child Beggars in Asia", World of Work, supra note 36.

[82] See Recommendations concerning economic exploitation of children in Report of the Committee on the Rights of the Child, Official Records of the General Assembly, Forty-ninth Session, Supplement No. 41 (A/49/41) (1994), chap. I.

[83] Commission on Human Rights resolution 2000/59, annex A. For further information see section on Trafficking in children, supra, see also Rachel Hodgkin and Peter Newell, Implementation Handbook for the Convention on the Rights of the Child, 1998, p. 473.

[84] Commission on Human Rights resolution 2000/59, annex B; see G. Goodwin-Gill and I. Cohn, Child Soldiers: The Role of Children in Armed Conflicts, 1994; see also C. Hamilton and T. Abu El Haj, "Armed Conflict and the Protection of Children in International Law", International Journal of Child Rights, vol. 5 (1997), p. 1.

[85] See Graça Machel, The impact of armed conflict on children (A/51/306) (1996); The Position of the ICRC on the Optional Protocol to the Convention on the Rights of the Child, 1997.

[86] Article 8 (2) (b) (xxvi) and 8 (2) (e) (vii).

[87] See Report of the working group on a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts on its sixth session (E/CN.4/2000/74).

[88] Report of the Working Group on Slavery on its first session (E/CN.4/Sub.2/AC.2/3) (1975), para. 16.

[89] Report of the Working Group on Slavery on its ninth session (E/CN.4/Sub.2/1983/27), recommendations 3 and 13.

[90] Report of the Working Group on Contemporary Forms of Slavery on its seventeenth session (E/CN.4/Sub.2/1992/34), p. 26.

[91] V. Muntarbhorn, Report on the sale of children (E/CN.4/1991/51), paras. 23-25. The issue of organ trafficking was also referred to by Ofelia Calcetas-Santos in her reports on the sale of children, child prostitution and child pornography submitted to the General Assembly (A/50/456), para. 49, in 1995 and to the Commission on Human Rights (E/CN.4/1996/100), paras. 41-48.

[92] World Health Organization, Human Organ Transplantation, A Report on Developments Under the Auspices of WHO (1987-1991) (1991); see also WHO Executive Board, 8th Session, document EB87.R22 and World Health Assembly, 44th Session, resolution WHA44.25.

[93] Report of the Working Group on Contemporary Forms of Slavery on its sixteenth session, (E/CN.4/Sub.2/1991/41), para. 138.

[94] Report of the Working Group on Contemporary Forms of Slavery on its nineteenth session, (E/CN.4/Sub.2/1994/33), recommendation 2 (b).

[95] Commission on Human Rights resolution 1996/61; Report of the Working Group on Contemporary Forms of Slavery on its twenty-first session (E/CN.4/Sub.2/1996/24).

[96] Commission on Human Rights resolution 1996/61; Programme of Action on the Traffic in Persons and the Exploitation of the Prostitution of Others, art. 28.

[97] Report of the Working Group on Contemporary Forms of Slavery on its eighteenth session (E/CN.4/Sub.2/1993/30), p. 40.

[98] Although the distinction between slavery and incest has not been delineated in a formal manner, it has been implicitly accepted in some national courts. Akhil Reed Amar and Daniel Widawsky, "Child Abuse as Slavery: A Thirteenth Amendment Response to DeShaney", Harvard Law Review, vol. 106 (1992), p. 1359 (discussing a recent claim that, in the United States, child abuse is covered by the Thirteenth Amendment to the Constitution which prohibits the existence of slavery or involuntary servitude, which argument was rejected by the United States courts).